

MINUTES

INDEPENDENT PETROLEUM ASSOCIATION OF NEW MEXICO

Board of Directors' Meeting

February 13, 2014

Inn at Loretto, Santa Fe, NM

Elected Board members in attendance were Tom Blair, Ryan Davis, Ron Hillman, Ed Lauer, Knute Lee, and Art Merrick. Officers present were Richard Gilliland, Gary Brink, Mitch Krakauskas and Glen Papp. Past Presidents in attendance were Bob Armstrong, Dan Girand, Mark Murphy and Greg Nibert. Christian Combs and Rory McMinn attended, by way of proxy from Dru Bower-Moore and Betty Young, respectively. Also in attendance were Karin Foster and Pam Garlinger.

▪ **Old Business**

- **Infazine 2014** - Richard Gilliland reported that the 2014 issue of "Energy New Mexico" is complete, and that he was pleased with the outcome. He thanked Tom Mullins, Karin Foster, Greg Nibert and Dan Girand, with a special thank you to Carrie Thompson, for all their work on the publication. The initial budget was \$22,000; however, the total costs came in at \$20,000. There have been over 2,300 infazines distributed.
- **Prairie Chicken** -Greg Nibert gave the Board an update on the issue, reporting that the Fish & Wildlife Service has given notice of an EIS for the 4D rule portion that may go into effect if the chicken is listed. He optimistically stated that the 5-State plan is in good order, and management of the chicken may be left to the five states to manage, if it is not listed. A group of counties has hired additional scientists to do research. Kansas has written its own plan, attacking the 5-State plan. It should be resolved by March, although it could be moved back.
- **SLO Off-Lease Pad Rentals** -Mitch Krakauskas, Ron Hillman and Karin Foster have been engaged on the issue on behalf of IPANM. Mitch stated that industry had submitted a draft business lease to the SLO in November, but have not met since then due to

meeting cancellations. The SLO has released an interim draft one-year lease that Encana and Concho have both signed. He further stated that the SLO is trying to generate more revenue from these commercial business leases in these off-lease situations, where they would otherwise only receive a small pad fee. SLO has proposed a \$90,000 upfront fee with a \$3,500 per year rental for a five acre pad. This was based on a 1% override, which is what North Dakota was supposedly charging. Upon further review by industry, North Dakota has the ability to charge this fee, but has never done so. Industry countered with a \$5,000 up front fee and \$500 per year rental and suggested that the SLO research what other states are doing in this situation. We have not had any meetings with the SLO in the last two months, but have plans to meet after the legislative session has ended. Greg Bloom, of the SLO, said that he believes the business issues will not change, but the fee will probably go down.

- **Potash Rule Update** - Mitch Krakauskas reported that the new guidelines have been issued and are available on the website.
- **Oilfield Electrification Update - Permits/Inspection**—Karin reported that due to the fast pace of activity in the south, the inspectors were facing a backlog. A new inspector has been hired in Hobbs and is expected to clear pending inspections.

She also spoke of the possibility of a new certification designed specifically for electrification in the oilfield. We are working with the Junior College in Hobbs on qualifications for certification. It would require legislation next year.

- **GPC-6 Air Quality Permitting and SubPart 0000 Update** - This issue applies to emissions in the oilfield. After SubPart 0000 was issued, GPC-6 (permit) came out. It includes lots of testing and reporting requirements over and above the EPA requirements. This is not what industry asked for. Karin wants to file a petition the Environmental Improvement Board to review the GCP-6, seeking no additional financial burden on industry. But it is in effect now, and industry should continue to comply. The IPANM Executive Board and Karin are working on the petition. Secretary Flynn is trying to work with oil and gas, but his staff continues to be a problem. Richard emphasized that “seeking oil and gas input” should include consulting both NMOGA and IPANM.

- **Litigation Update**

- *Amicus brief filing on Surface Owners Protection Act*—Karin informed the group that on December 23, she filed two briefs on behalf of IPANM and was granted amicus status with the court of appeals on the Sovereign Case, where landowners claimed damage due to seismic operations, after the operations were completed. The issue is whether a seismic operation is a pre-development survey, or a development activity. The brief was in support of the lower court decision that seismic is pre-development. The second brief was in opposition to the lower court decision that the standard of good/bad faith does not apply to a landowner in negotiations. In this case, the landowners were present during the seismic survey. Six months later, after winter, they claimed damage to their roads due to ruts caused by the seismic trucks. They did not give the company any opportunity to make repairs. Mark Murphy, owner of Sovereign, expressed his appreciation that the association took on this issue. He believes the good faith precedent needs to be set, whether here or elsewhere.
- *Amicus Brief Filing on State Marketability Case* - Richard gave a brief history of our involvement in the case. In the October Board meeting Karin informed us that Drew Cloutier, at no charge to us, would file an amicus brief in the Davis v. Devon case. He subsequently filed two briefs. Drew was offered five minutes from Devon's time to make his argument in court. Drew asked for fees not to exceed \$5,000 to pursue the case further. After checking with the IPANM legal committee, a unanimous decision was reached to stay involved. (Drew and Greg Nibert abstained from voting.) We authorized him to proceed, and he provided oral testimony yesterday. Karin asked the Supreme Court for further opportunity to argue that there should be no marketability rule in New Mexico. In the Devon case, Judge Ellington stated in a preliminary ruling, that the marketability rule does apply, but the language does not apply. The question remains, "is there, or is there not, a marketability rule in New Mexico?" This very difficult issue has been in litigation for 11 years. The defendant argues to resolve this case. The Supreme Court agreed and ruled that the case should go to trial before the end of the year. Of most concern is that this is a \$400 million case regarding leases dating back to the 1940s and 18 percent interest and penalties. It is felt that

Devon will go to trial, and that ConocoPhillips will settle. It may be necessary for IPA to be involved after the trial is resolved, as eight other cases are in the pipeline. The decisions have not been consistent so far. Karin stated that other states vary in their position. For example, Colorado has the rule, and Texas does not.

- *IPANM Suit Versus Mora County* – Richard reviewed the background of our involvement, stating that at the October Board meeting, the Board voted to go ahead with Mountain States Legal Foundation (MSLF), as we have already made arrangements with them. We also agreed, unanimously, that IPANM would not cover legal costs with NMOGA for their case. We informed NMOGA that they were welcome to join our case. Karin, MSLF and the legal committee analyzed the framework of the NMOGA case and determined that should differences between NMOGA and IPANM occur, MSLF could be dropped as counsel, leaving us with no representation. We would have liked to move forward with separate cases and then make a motion to join the two together, thus reserving our representation. NMOGA wanted to join the two up front, and conceded in an email stating that we should go forward with our case, as is.

The case was filed on November 11. The Environmental Defense Fund had stated that it would defend the county if sued by oil and gas, but immediately withdrew their support when the case was filed. Now, the NM Environmental Law Center has been secured as their representative. Their response to us was the ordinance was not a true ban, but was just a need to protect their ground water from fracking. We were assigned a judge who subsequently retired, and then consented to accept a magistrate judge. In December, Shell approached MSLF to join our suit. Our position was that their position as “Big Oil” would change the essence of our lawsuit. We offered Shell the same scenario as we did NMOGA. They declined and later filed their own lawsuit and were assigned a different judge. Karin expects that the two cases will be consolidated together.

- *Pit Rule Update* – This issue is now in the Court of Appeals in New Mexico with the question if a notice of appeal could be filed around OCD. Is the 2008 rule pertinent and still on books? Does 2013 go away? NMOGA is using Holland & Hart for pit rule. We still have a case on the 2013 rule.

- **New Business**

- **Renewal of Foster Contract** - The proposed terms of Karin's 2014-15 contract were discussed by the Board members. Richard discussed specific changes and additions that were proposed in the new contract as compared to the former contract. The Board members re-iterated the need for each staff member and/or contractor for IPANM to continue to report to and receive direction from the president and the board directly. Karin's contract was put before the Board for a vote, and was passed unanimously.
- **NMOGA Relationship Update** - Richard told the group that following discussions with NMOGA regarding the Mora case, Steve Henke sent him an email wishing us luck with the case and stating his desire to cooperate and communicate with IPANM. Less than one week later, Karin got a text message late on a Sunday evening stating that, "Should NMOGA have the need to confer with IPANM, I will communicate with either you or your president. In the absence of an invitation from me, stay out of all NMOGA committee meetings, conference calls and functions." Karin forwarded the text message to the Executive Board to determine exactly what was meant by that. Richard's feeling is that it is convenient to make this about individual personalities, but he interprets the statement to mean all of IPANM. After multiple attempts, he was able to speak with Tom Janiszewski, Chairman of NMOGA, about the text message. Richard was seeking to determine if the text was out of frustration over the Mora suit, or was it on behalf of the NMOGA Board. This was crucial because of the legislative committee meetings, which IPANM had always been invited to participate in as a sister organization. He was unaware of the text message and asked for a copy so he could discuss it with Steve Henke. There has been little communication in the meantime, with Karin being barred from the committee meetings during the ongoing legislative meetings. The NMOGA Board has backed Steve on this issue, and has affirmed that IPANM was barred. Richard tried repeatedly to make contact with NMOGA to discuss how to move forward, and he and Glen Papp were finally able to sit down with Steve Henke and Tom Janiszewski yesterday afternoon. Steve stated that this was a personal conflict, and Richard made it clear that it was not a one way conflict, admitting that strong personalities were in play on both sides.

During the two to three hour meeting at NMOGA's offices, Richard and Glen made an attempt to reconcile the two associations for the good of industry. IPANM is still not welcome at NMOGA meetings.

Richard will begin talking to Steve Henke and Tom Janiszewski on a regular basis to keep the channels open. Richard believes it is critical that the two boards should be in direct communication, as there currently are concerns of manipulation on both sides. There are three board members who currently serve on both boards. Karin believes that Tucker Bayless and John Byrom do not wish to be caught in the middle, and new board member Ed Lauer was unaware of any conflict. Glen Papp asked that the group move forward and forget the past, and asked that we “trust, but verify.”

Greg Nibert stated that during his term as president, he tried to follow our Board’s instructions to cooperate with NMOGA, but found himself to be in the same difficult situation. He believes our Board is not being manipulated. His advice was to move forward and try to deal with NMOGA, but expressed his doubts if it would be possible with the recent escalation of tension and the barring of IPANM. Richard stated that any pretense of cooperation is gone, and is apparently supported by their board. IPANM may need to be a little more independently assertive. Greg stated that regardless of this issue, we still are charged with representing independent producers, and it may be necessary for us to form committees on issues where we relied on NMOGA. We would make sure that NMOGA is welcome to attend any committee meetings we hold.

John Thompson added that he also had problems dealing with NMOGA during his tenure, and does not trust their word, particularly after their treatment of us during the pit rule. He advised future presidents to be very cautious and identify issues where we do not agree as quickly as possible. He also stated that communication should be president to president, not executive to executive.

Mark Murphy brought up the idea of having a periodic joint board meeting between IPANM and NMOGA to help foster better communication between the governing bodies of both organizations. John Thompson agreed that this was a good idea and also mentioned that this was tried at our annual meeting a couple of years ago, with limited participation from NMOGA.

Karin stated the need for state regulators to realize there are two oil and gas associations, and both should be consulted on oil and gas issues.

- **Regulatory Issues** – Due to time constraints, Karin gave very brief comments on the following items:

- *Surface Waste Management Rule* – Karin suggested that we re-write the regulatory practices guidelines for the three rules associated with waste management. NMOGA is already working on the matter, and it is in our best interest to get our version done first and stick to it.
- *Enforcement Rule* – with the activity in the southeast, operators are not getting permits timely. This is a rule that needs to be re-written.
- *BLM Rotational Lease Sales* – Karin reported on her meeting the BLM earlier in the day. Their reasoning for implementing rotational lease sales is the lack of funding. They need to extend the period for nominations to nine months before the actual sale. The Pecos district sale will always be in July, Farmington sale will be in October, Rio Puerco & Las Cruces sale will happen in January, and in April for Kansas and Texas. They asked us to start conversations with our leaders in Washington to get their budget increased.
- **Media and Outreach Issues** – This item was not addressed due to time constraints.
- **2014 Legislative Preview**

 - Karin skipped the report, and informed the group that we need to be more aggressive in working with on legislation and regulatory issues when dealing with the governor's office, especially in the event that she is reelected.
- **Treasurer's Report**

 - Francisco Olvera was ill and did not attend the meeting, but he sent the financial information for the Board to review. Richard said there were inaccuracies in the proposed budget due to miscommunication between himself and Francisco. He asked the Board to agree to look at the budget and approve it electronically, after he and Francisco make the changes.
- **Next Board Meeting**

 - The next meeting has been tentatively scheduled for August 6, at the Annual Meeting in Albuquerque. Details will be released as they are firmed up.